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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1420

VERA TEPERICH, Petitioner

vs

NORTH JUDSON-SAN PIERRE HIGH SCHOOL BUILDING CORPORATION and NORTH JUDSON-SAN PIERRE SCHOOL CORPORATION

Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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STATEMENT OF THE CASE--CORRECTED

In the petitioner's Statement of the Case, she states that the North Judson-San Pierre High School Building Corporation (hereinafter called Building Corporation) is a not-for-profit corporation. The record does not disclose whether the building corporation is a not-for profit corporation or a for-profit corporation. However, it was formed as a corporation for profit and not as a not-for-profit corporation. This correction of the statement of the case is

not relevant to the decision of the Court.

REASONS FOR DENYING THE WRIT

1. THE SUPREME COURT OF THE UNITED STATES MUST ACCEPT THE STATE COURT'S CONSTRUCTION OF A STATE STATUTE.

The Supreme Court of the United States has consistently followed the rule that it will accept the state court's construction of the constitutionality of the state statutes under the state constitution and has held that the interpretation of the state supreme court of the constitutionality of a state statute is the final adjudication.

In Highland Farms Dairy v Agnew, (1937), 300 U.S. 608, 81 L.Ed. 835, 57 S.Ct. 549, Justice Cardoza stated at page 840 of 81 L.Ed.,

> "A judgment by the highest court of the state as to the meaning and effect of its own constitution is decisive and controlling everywhere."

See also, Hunter v Pittsburgh, (1907), 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151.

Thus, the decision of the Indiana Supreme Court finding that the Schoolhouse Building Act does not violate Article XIII, Sec. 1 of the

Constitution of the State of Indiana is conclusive upon the Supreme Court of the United States.

II. THE PETITIONER RAISED NO FEDERAL QUESTION IN EITHER THE TRIAL COURT OR IN THE INDIANA SUPREME COURT AND THEREFORE THE SUPREME COURT OF THE UNITED STATES WILL NOT DECIDE ANY CONSTITUTIONAL QUESTION PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI.

The failure of the petitioner to raise any federal questions, either in the trial court or in the Supreme Court of Indiana precludes the Supreme Court of the United States from considering this Petition for Writ of Certiorari. In Edelman v People of the State of California, (1952), 73 S.Ct. 293, 344 U.S. 357, 97 L.Ed. 387, Justice Clark held that the federal questions were not properly presented in the record and therefore, the Supreme Court of the United States did not have jurisdiction to hear the case. See also, cases cited under notes of decisions under Title 28 U.S.C.A., Sec. 1257, Nos. 290, 292, 293 and 294.

Recognizing this rule of law, Rule 23 (f) of the Rules of United States Supreme Court requires that the petition for writ of certiorari set forth:

> "The stage of the proceedings in the court of first instance and in the appellate court at which and the manner in which the federal questions thought to be re-

viewed were raised; the method of raising them * * *; and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record or summary thereof with specific reference to the places in the record where the matters appear * * * as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

The petitioner has failed to comply with Rule 23 (f) for the reason that the questions were never presented, either in the trial court or in the Supreme Court of Indiana.

III. THE DECISION OF THE SUPREME COURT OF INDIANA IS CORRECT AND IN CONFORMITY WITH THE PRIOR DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

In Walla Walla v Walla Walla Water Company, (1898), 172 U.S. 1, 43 L. Ed. 341, the Supreme Court of the United States recognized the problems connected with municipal debt and at page 349, 43 L.Ed., Justice Brown stated the law to be as follows:

"But we think the weight of authority, as well as of reason, favors the more liberal construction that a municipal corporation may contract for a supply of water or gas or like necessary, and may

stipulate for the payment of an annual rental for the gas or water furnished each year, notwithstanding the aggregate of its rentals during the life of the contract may exceed the amount of the indebtedness limited by the charter. There is a distinction between a debt and a contract for a future indebtedness to be incurred, provided the contracting party perform the agreement out of which the debt may arise. There is also a distinction between the latter case and one where an absolute debt is created at once, as, by the issue of railway bonds or for the erection of a public improvement, --though such debt be payable in the future by instalments. In the one case the indebtedness is not created until the consideration has been furnished; in the other the debt is created at once, the time of payment being only postponed.

"In the case under consideration the annual rental did not become an indebtedness within the meaning of the charter until the water appropriate to that year had been furnished. If the company had failed to furnish it, the rental would not have been payable at all, and while the original contract provided for the creation of an indebtedness, it was only upon condition that the company performed its own obligation. Wood v Partridge, 11 Mass. 488, 493. A different construction might be disastrous to the interests of the city,

since it is obviously debarred from purchasing or establishing a plant of its own exceeding in value the limited amount, and is forced to contract with some company which is willing to incur the large expense necessary in erecting waterworks upon the faith of the city paying its annual rentals."

The Walla Walla decision is in conformity with the decision in this case in the Supreme Court of Indiana.

As to the contentions set forth in the petitioner's brief that school boards are required to be elected and the contention in the petitioner's brief that the public has a right to vote on whether or not monies shall be appropriated and spent for new school buildings, this Court has disposed of those contentions in Ohio ex rel Bryant v Akron Metropolitan Park District, (1930), 281 U. S. 74, 74 L. Ed. 710. The State of Ohio had passed a statute which created a park district, provided that the park commissioners were to be appointed by the probate judge, that the park commissioners were to have power to acquire land, create parkways, parks and other reservations of land, they were authorized to lay assessments upon specially benefited lands and were authorized to levy taxes upon all taxable property within the district up to one mill.

In disposing of the contention that the law was unconstitutional in violation of the 14th Amendment to the Constitution of the United States,

the Court held that the question had not been preserved, and as to the guarantee of a republican form of government the Court held at page 715, 74 L. Ed. as follows:

> "As to the guaranty to every state of a republican form of government (Sec. 4, art. 4), it is well settled that the questions arising under it are political, not judicial, in character and thus are for the consideration of the Congress, and not the courts."

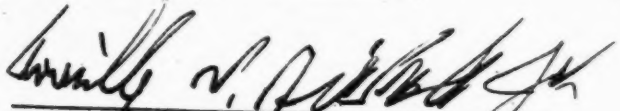
CONCLUSION

If the contention of the Petitioner were accepted, this would destroy and make void millions of dollars worth of school building corporation bonds now outstanding in the State of Indiana. The common method of financing school construction at the present time is for the school corporation to issue its general obligation bonds for a part of the school construction, and then to enter into a lease with a school building corporation for another part of the school construction, or additional school construction. The general obligation bonds are outstanding, together with the school building corporation bonds. The legislature has provided a system of review as to whether or not the school corporation needs the school building, or whether or not the proposed lease is unnecessary, or unwise. or that the lease rental is not fair or reasonable by providing for a review upon remonstrance by the State Board of Tax Commissioners, Burns, Indiana Statutes Annotated, Section 28-3907.

Where obligations are incurred by municipalities in violation of Article 13, Section 1 of the Constitution of Indiana, the obligations are not enforceable. Also, taxpayers would be authorized to bring an action to prevent the payment of obligations in excess of 2% of the assessed valuation. LaPorte v Gamewell Fire Alarm Tel. Co., (1896), 146 Ind. 466, 45 N.E. 588, 35 L.R.A. 686, 58 Am. St. 359, Caldwell v Bauer, (1913), 179 Ind. 146, 99 N.E. 117, Angola Brick & Tile Co. v Millgrove School Tp., (1920), 73 App. 557, 127 N.E. 855.

Thus, for the reasons above given, the Supreme Court of the United States should deny the Petition for Writ of Certiorari in this cause.

Respectfully submitted,



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